

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 7208 Lake Hawkins, Arlington, TX 76002

Address of Defendant: 2501 Seaport Drive, Chester, PA 19013

Place of Accident, Incident or Transaction: Delaware County, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
 Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
 Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify)

Telephone Consumer Protection Act 47 U.S.C. §227, et seq.

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Michael D. Shaffer, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 1/28/11

 Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/28/11

 Attorney-at-Law

60190
 Attorney I.D.#

60190
 Attorney I.D.#

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A. Federal Question Cases:

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6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) **Telephone Consumer Protection Act 47 U.S.C. §227, et seq.**

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

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Attorney-at-Law

60190

Attorney I.D.#

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Claudia Johnson

(b) County of Residence of First Listed Plaintiff Tarrant, Texas

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Michael D. Shaffer, Esquire, SHAFFER & GAIER, LLC, 1617 JFK Boulevard, One Penn Center, Suite 946, Philadelphia, PA 19103
(215) 751-0100, mshaffer@shaffergaier.com

DEFENDANTS

Wells Fargo Auto Finance, Inc.

County of Residence of First Listed Defendant Delaware, PA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227 et seq. - Telephone Consumer Protection Act

Brief description of cause:
"Prohibited Calls"

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
6,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

01/27/2011

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

CLAUDIA JOHNSON, on behalf of herself	:	
and all others similarly situated,	:	CIVIL ACTION
	:	
v.	:	
	:	
WELLS FARGO AUTO FINANCE, INC.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ☒
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

1/28/11
Date

Michael D. Shaffer
Attorney-at-law

MDS 2227
Attorney for Plaintiff

(215) 751-0100
Telephone

(215) 751-0723
FAX Number

mshaffer@shaffergaier.com
E-Mail Address

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of Pennsylvania

Claudia Johnson

Plaintiff

v.

Wells Fargo Auto Finance, Inc.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Wells Fargo Auto Finance, Inc.
2501 Sea[port Drive
Chester, PA 19013

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael D. Shaffer, Esquire
Shaffer & Gaier, LLC
1617 JFK Boulevard, Suite 946
Philadelphia, PA 19103

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz
Clerk of Court

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**CLAUDIA JOHNSON, on behalf of
herself and all others similarly
situated,**

Plaintiff,

vs.

**WELLS FARGO AUTO
FINANCE, INC.**

Defendant.

CASE NO.

**CLASS ACTION
COMPLAINT FOR
DAMAGES AND
INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§ 227 ET SEQ.**

Jury Trial Demanded

Claudia Johnson ("Plaintiff"), individually and on behalf of all others similarly situated, allege on personal knowledge, investigation of counsel, and on information and belief as follows:

INTRODUCTION AND NATURE OF ACTION

1. Plaintiff brings this action for statutory damages, injunctive relief and any other available legal or equitable remedies, resulting from the illegal actions of Wells Fargo Auto Finance, Inc., a national consumer lender, in negligently and/or willfully placing or having calls placed to Plaintiff on her cellular telephone without her prior express consent and not for emergency purposes (sometimes referred to herein as "Prohibited Calls"), in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, ("TCPA").

2. Plaintiff also brings this action for statutory damages, injunctive relief

1 and any other available legal or equitable remedies, resulting from the illegal
2 actions of Wells Fargo Auto Finance, Inc. ("Defendant"), consumer lending
3 company, in negligently and/or willfully placing Prohibited Calls in violation of the
4 TCPA.
5

6 3. Plaintiff is one such victim of Defendant's repeated Prohibited Calls.
7 Worst of all, Plaintiff (and others similarly situated) do not even owe the debt at
8 issue. Plaintiff was never a customer of Wells Fargo Auto Finance and had no prior
9 business relationship of any sort with Wells Fargo Auto Finance. She was only
10 listed as a reference for a family member. She does not have joint ownership of the
11 vehicle, she did not co-sign for the purchase of the vehicle, and she never gave
12 her consent to be called on her wireless number. Most importantly, she has made
13 explicit request to Defendant that they not call her wireless number. Defendant
14 refused to comply and actually made demands for payment from Plaintiff. This is a
15 problem faced by a large number of Americans and is summarized in a recent New
16 York Times posting, entitled "*When a Debt Collector Calls for Debt You Don't*
17 *Owe.*"¹
18
19
20
21

22 4. In 1991, Congress enacted the TCPA in an effort to combat the
23 invasion of privacy faced by everyday Americans who received unwanted calls. In
24 relevant part, the TCPA prohibits the use of an automatic telephone dialing system
25
26

27 ¹ Jennifer Schultz, *When a Debt Collector Calls for Debt You Don't Owe*, N.Y. Times, Nov. 1,
28 2010. (Available at, <http://bucks.blogs.nytimes.com/2010/11/01/when-a-debt-collector-calls-for-debt-you-dont-owe/>)

1 to call any telephone number assigned to a cellular telephone service absent an
2 emergency purpose or the “prior express consent” of the called party. The Federal
3 Communication Commission (“FCC”), the agency empowered to implement the
4 TCPA, mandates that “the burden will be on the creditor to show it obtained the
5 necessary prior express consent.”²
6

7 8 9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction under the Class Action Fairness Act of
11 2005 because Plaintiff seeks up to \$1,500 in statutory damages for each of the
12 hundreds of calls that were placed to her cellular phone in violation of the TCPA,
13 which, when aggregated among a proposed class, numbering in the tens of
14 thousands, easily exceeds \$5,000,000. Plaintiff is a Texas citizen and Defendant
15 Wells Fargo Auto Finance, Inc. is a citizen of Pennsylvania. Additionally, Plaintiff
16 seeks to represent numerous class members, who are citizens of various other
17 States.
18
19
20

21 6. Venue is proper in the United States District Court for the Eastern
22 District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 1441(a) because
23 Defendant resides in City of Chester, County of Delaware and is a citizen of
24 Pennsylvania.
25
26

27 ² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act*
28 *of 1991*, 23 F.C.C.R. 559, at ¶ 10 (2008).

PARTIES

7. Plaintiff is, and at all times mentioned herein was, an individual citizen of the State of Texas, and resident of the Tarrant County. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(10).

8. Wells Fargo Auto Finance, Inc. is, and at all times mentioned herein was, a national consumer lender specializing in automobile loans and a Pennsylvania corporation, whose principal place of business is 2501 Seaport Drive, Chester, PA 19013. Wells Fargo Auto Finance, Inc. does business throughout the country, including this District. Defendant is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(10).

9. The FCC has mandated: “[a] creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission’s rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call.”³ Thus, Wells Fargo Auto Finance is not only liable for Prohibited Calls its collections department makes, it is also vicariously liable for the Prohibited Calls placed by any collection calls seeking debt collection for Wells Fargo accounts.

10. On information and belief and the investigation of counsel: (a)

³ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, at ¶ 10 (2008).

1 Defendant placed Prohibited Calls to Plaintiff, demanding payments for a vehicle
2 she does not own and did not co-sign for; (b) Defendant knew or should have
3 known that Plaintiff is neither an owner of the vehicle nor a co-signer of the
4 purchase agreement; (c) Defendant knew or should have known that it was placing
5 Prohibited Call in their debt collection; and (d) Defendant refused to comply with a
6 explicit verbal request to stop placing Prohibited Calls to Plaintiff.
7
8
9

10 **PLAINTIFF'S FACTUAL ALLEGATIONS**

11 11. Plaintiff has received numerous Prohibited Calls to her cellular phone
12 during the past few months from Defendant.
13

14 12. Plaintiff has incurred charges for these Prohibited Calls. The FCC has
15 made clear that "wireless customers are charged for incoming calls whether they
16 pay in advance or after the minutes are used."⁴
17

18 13. During these Prohibited Calls Defendant used an "automatic
19 telephone dialing system and/or an artificial or prerecorded voice" as prohibited by
20 47 U.S.C. § 227(b)(1)(A).
21

22 14. These calls were for the purpose of collecting debt and were not for
23 emergency purposes as set forth in 47 U.S.C. § 227(b)(1)(A).
24

25 15. Plaintiff did not provide "prior express consent" to receive the
26 Prohibited Calls on her cellular telephone as set forth in 47 U.S.C. § 227(b)(1)(A).
27

28 ⁴*Id.* ¶ 7.

1 16. The Prohibited Calls received by Plaintiff were intended for a person
2 other than the Plaintiff.

3 17. Plaintiff had no business relationship with Defendant whatsoever, was
4 never a customer of Defendant, and yet received Prohibited Calls seeking debt
5 collection for an account belonging to a family member.

6 18. These Prohibited Calls placed by Defendant were in violation of 47
7 U.S.C. § 227(b)(1).
8

9
10 **CLASS ACTION ALLEGATIONS**

11 19. Plaintiff brings this action on behalf of herself and on behalf of and all
12 others similarly situated (the "Consent Class"), as follows:
13

14 **All persons within the United States to whom Defendant has**
15 **placed a call to said person's cellular telephone (without**
16 **their prior express consent and not for emergency**
17 **purposes) through the use of an automatic telephone dialing**
18 **system or an artificial or prerecorded voice, within the four**
19 **years prior to the filing of this Complaint.**
20
21

22 20. Plaintiff also brings this action on behalf of herself and on behalf of
23 all others similarly situated (the "Error Subclass"), as follows:
24

25 **All persons within the United States to whom Defendant has**
26 **placed a call to said person's cellular telephone (without**
27 **their prior express consent and not for emergency**
28

purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint, where such person is not the debtor (*i.e.*, not the intended recipient of Defendant's call).

21. Plaintiff also brings this action on behalf of herself and on behalf of all others similarly situated (the 'No-Relation Subclass'), as follows:

All persons within the United States to whom Defendant has placed a call to said person's cellular telephone (without their prior express consent and not for emergency purposes) through the use of an automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint, where such person does not have any debtor-creditor relationship with the Defendant or the Defendant's clients (*i.e.*, the recipient of Defendant's call is a reference, co-signer, family member of the debtor or the like).

22. Defendant, their employees and other agents, the Judge to whom this action is assigned and any members of the Judge's staff, and claims for personal injury, wrongful death and/or emotional distress are excluded from the Classes. Plaintiff reserves the right to expand the class definitions to seek recovery on

1 behalf of additional persons as warranted as facts are learned in further
 2 investigation and discovery.

3 23. Plaintiff does not know the number of members in the Consent Class,
 4 Error Subclass and No-relation Subclass, but believes, based on Defendant's
 5 market share and investigation of counsel, that the number is in the tens of
 6 thousands, if not substantially higher. Thus, joinder of all Consent Class, Error
 7 Subclass or No-relation subclass is impractical due to the size and relatively small
 8 value of each member's claim.
 9

10 24. Indeed, the Internet is replete with discussions between numerous
 11 members of the Consent Class, Error Subclass, and No-relation Subclass — all
 12 desperate to end Defendant's calls. The following is a sampling, evidencing
 13 Defendant's egregious violations of the TCPA, the invasion of privacy suffered by
 14 members of the Classes, the numerosity of the Classes, the commonality of the
 15 issues and the typicality of Plaintiff as a class representative:
 16

17
 18
 19
 20 "Not Me
 21 25 Feb 2010

22 I don't have a loan with Wells Fargo Auto Finance...and I never have.
 23 But somehow, they are calling not me...but my parents' house...to get
 24 ahold of me for issues on an auto loan. I called them back, and the
 25 person I spoke with said that they had the wrong person. Then they
 26 called my parents AGAIN a few days later, and indicated that my Dad
 27 was a cosigner on my (non-existent) loan?????

28 Is this really even Wells Fargo? Or some scam company phishing for
 personal information? Their phone system says Wells Fargo, but is it
 really them? They asked my mom for her social security number >.>

Just a reminder to everyone to NEVER give out personal or financial
 information over the phone to anyone that you didn't initiate a call to."

(Available at, <http://800notes.com/Phone.aspx/1-800-511-1812/2>)

“Wrong guy
20 July 2010

I just got this new phone number and the same day I started getting calls from this number: 1-800-511-1812. I told them I wasn't the person they were looking for and that I just got this new number. The calls stopped for a week then it started again. Then they would call from other numbers. I finally got angry and said I wasn't the guy they were looking for and to never call me again, remove my number, etc.. The lady on the other end told me she has this number and tried to get me to say I was lying about who I was.

I reported the incident to the BB and my local Attorney General's office for business violations under the fair credit act...not sure if that helps me but I figured any report is better than nothing.”

(Available at, <http://800notes.com/Phone.aspx/1-800-511-1812/2>)

“coop
17 Nov 2010

They keep calling my new cell phone and asking for someone who i guess used to have this number. i have told them 5 times they have the wrong number but they still keep calling!”

(Available at, <http://800notes.com/Phone.aspx/1-800-511-1812/2>)

“ Heather
7/14/2009

Wells Fargo Auto Finance started calling my cell phone about 7 months ago asking for a "Jeff & Marsha". My husband is Jeff, but there is no Marsha and they somehow only found my cell phone number (which is actually under the main account number held by my husband Jeff).

We have told them over and over they have the wrong number. We have talked with supervisors who have put us on a "no call" list. Sometimes when I call, they say they can't find our information at all.”

(Available at, <http://en.allexperts.com/q/Collections-Law-912/2009/7/Collector-Wrong-Person-won.htm>)

“Carol
1/9/2009

No loan with this gang. They have been calling for months. They insist a male is owing them money and I am hiding him. "These calls will continue until you give us your SS #." they call after 10 pm , before 8 am, several times a day. they say things like, 'so you are

refusing to get him?

I am a female senior living alone. One with this name was fired as manager of a gay bar in a city 50 miles away. If I can get this information, why can't they?

Verizon is refusing to assist me. police case and FTC case."

(Available at, <http://www.ripoffreport.com/credit-debt-services/wells-fargo-aato-fin/wells-fargo-auto-finance-unlaw-3b33b.htm>)

"Paul
2 Sep 2007

Woman spoke to my son. Asked for people of five different first names, finally got to mine. He told them I was out and to call back later. She did call back when I was not home, leaving a message to call the 800-565-2310. A few days earlier I got similar calls about some auto finance and told them they must have had the wrong person and wrong number. I earlier got a call from some automated system in which they voiced someone's name who never had this phone number and doesn't live at this address. I told them to stop and desist but these strange calls keep coming. If these calls continue I will report them for harassment to Federal authorities. If I get a call from someone who doesn't pick up within 3 seconds I will also automatically slam the phone down."

(Available at, <http://800notes.com/Phone.aspx/1-800-565-2310/4>)

25. The members of the Consent Class, Error Subclass and No-Relation Subclass share well defined, nearly identical, questions of law and fact, which predominate over questions that may affect individual members of the Classes. These common questions of law and fact include:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant have placed any calls (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service.

1 b. Whether, within the four years prior to the filing of this Complaint,
2 Defendant has placed any calls to any telephone number assigned to a
3 cellular telephone service (without their prior express consent and not for
4 emergency purposes) through the use of an automatic telephone dialing
5 system or an artificial or prerecorded voice, seeking debt collection, where
6 the person called never had a Wells Fargo Auto Finance account or business
7 relationship with Wells Fargo Auto Finance. (i.e., not the intended recipient
8 of Defendant's call).
9

10
11 c. Whether Defendant's conduct was knowing and/or willful.
12

13 d. Whether Defendant's can meet their burden of proving that they had
14 obtained prior express consent for such calls to members of the Classes.
15

16 e. Whether Defendant's should be enjoined from placing such calls in
17 the future.

18 26. The Classes are ascertainable and can be identified through
19 Defendant's records.
20

21 27. Plaintiff and members of the Classes are entitled to statutory damages
22 as provided for under the TCPA.
23

24 28. As a person that received numerous calls using an automatic
25 telephone dialing system or an artificial or prerecorded voice: (1) without
26 Plaintiff's prior express consent; and (2) as a person who is never had a Wells
27
28

1 Fargo Auto Finance account, Plaintiff is asserting claims that are typical of the
2 Consent Class, Error Subclass and No-Relation Subclass.

3 29. Plaintiff will fairly and adequately represent and protect the interests
4 of the Consent Class, Error Subclass and No-Relation Subclass in that Plaintiff has
5 no interests antagonistic to any member of the Classes.
6

7 30. Plaintiff and the members of the Classes have all suffered harm as a
8 result of the Defendant's unlawful and wrongful conduct. Absent a class action,
9 members of the Classes will continue to face the potential for irreparable harm. In
10 addition, these violations of law will be allowed to proceed without remedy and
11 Defendant will likely continue such illegal conduct. Class-wide damages are
12 essential to induce Defendant to comply with federal law.
13

14 31. Because of the size of the individual class member's claims, few, if
15 any, class members could afford to seek legal redress for the wrongs complained of
16 herein.
17

18 32. Plaintiff has retained counsel experienced in handling class action
19 claims and claims involving violations of the TCPA.
20

21 33. A class action is a superior method for the fair and efficient
22 adjudication of this controversy.
23

24 34. Defendant has acted on grounds generally applicable to the Classes
25 and evidence of Defendant's TCPA violations can be determined on a class-wide
26 basis.
27
28

FIRST CLAIM

(NEGLIGENT VIOLATIONS OF THE TCPA)

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The forgoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the members of the Classes are entitled to statutory damages of \$500 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

38. Plaintiff and the members of the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CLAIM

(KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA)

39. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et*
 2 *seq.*

3 41. As a result of Defendant's knowing and/or willful violations of 47
 4 U.S.C § 227 *et seq.*, Plaintiff and each of the members of the Classes are entitled to
 5 treble damages, as provided by statute, up to \$1,500, for each and every violation,
 6 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
 7

8 42. Plaintiff and the members of the Classes are also entitled to and seek
 9 injunctive relief prohibiting such conduct in the future.
 10

11 **PRAYER FOR RELIEF**

12 43. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff
 13 and the members of the Classes the following relief against Defendant:
 14

15 a. An Order, pursuant to Federal Rule of Civil Procedure 23(c) and (g),
 16 certifying the proposed Consent Class, Error Subclass and No-Relation
 17 Subclass and appointing Plaintiff's undersigned counsel of record to
 18 represent the Consent Class, Error Subclass and No-Relation Subclass.
 19

20 b. An Order issuing an injunction, pursuant to 47 U.S.C. § 227(b)(3)(A),
 21 enjoining Defendant from placing any further Prohibited Calls to members
 22 of the Classes and complying with the TCPA.
 23

24 c. As a result of Defendant's negligent violations of 47 U.S.C. §
 25 227(b)(1), Plaintiff seeks for herself and each member of the Classes \$500 in
 26
 27
 28

1 statutory damages, for each and every violation (each Prohibited Call),
2 pursuant to 47 U.S.C. § 227(b)(3)(B).

3 d. As a result of Defendant's willful and/or knowing violation of 47
4 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each member of the
5 Classes treble damages, as provided by statute, up to \$1,500 for each and
6 every violation (each Prohibited Call), pursuant to 47 U.S.C. § 227(b)(3)(B)
7 and 47 U.S.C. § 227(b)(3)(C).
8

9
10 e. An award of attorneys' fees and costs to counsel.

11 f. Such other relief as the Court deems just and proper.
12

13 **TRIAL BY JURY**

14
15 44. Plaintiff demands a jury trial on all claims
16

17 **SHAFFER & GAIER, LLC**

18
19
20
21 Dated: 1-27-11

By: 

22 MICHAEL D. SHAFFER, ESQUIRE
23 Attorney for Plaintiff Claudia Johnson
24 and the Proposed Classes
25
26
27
28